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by Sh. S-C Verma
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R. D. R. (J)

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Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR(C.G)

CRIMINAL REVISION NO. 134 06

APPELLANT
(In – Jail)

:

1) Suresh Kumar S/o Sukaloram Satnami
Aged about, 21 years, R/o. Village
Basula, PS Ghumaka, Distt-
Rajnandgaon (C.G.)

VERSUS

RESPONDENT

:

State of Chhattisgarh

Criminal Revision Under Section 397/401 of the Code
of Criminal Procedure

A.F.R. (19)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Revision No.134/2006

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Suresh Kumar

Vs.

State of Chhattisgarh

Post for orders 29.03.2006

**Sd/-
Dilip Raosaheb Deshmukh
Judge**

A.F.R.
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HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Revision No.134/2006

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Suresh Kumar

Vs.

State of Chhattisgarh

PRESENT: -

Shri S.C.Verma, learned counsel for the applicant.

Shri Ashish Shukla, G.A./Addl. Public Prosecutor for the State.

ORDER

(Delivered on 29-03-2006)

This Criminal Revision is directed against the judgment dated 16-02-2006 delivered by the learned Sessions Judge, Rajnandgaon in Criminal Appeal No.04/2005, affirming the judgment dated 13-01-2005 delivered by the learned Judicial Magistrate First Class, Rajnandgaon in Criminal Case No.1587/2004 whereby the applicant herein was convicted under Section-34(1)(a) of Chhattisgarh Excise Act. 1915 (hereinafter referred to as the "Act") and was sentenced to undergo rigorous imprisonment for 1 year and fine of Rs.25,000/-.

2. The factual matrix in brief is that on 26-08-2004 upon receiving a secret information that the applicant herein was in possession of illicit country made liquor, PW-2 Excise Sub-Inspector K.R.Taram Circle-B, Rajnandgaon, without obtaining a search warrant for want of time, proceeded to the spot and intercepted the applicant herein on Khairagarh Road, Rajnandgaon and seized 30 liters country made liquor made from Mahua from the possession of the appellant in a black

coloured Jerrican. Shri K.L.Taram PW-2 examined the contents of the Jerrican by smelling, tasting and by performing litmus test and found that it was country made liquor. 30 bulk liters of country made liquor contained contained in a Jerrican was seized in presence of witnesses Ishwar PW-1 and Neeraj Shrivastava PW-3. The applicant was prosecuted for the offences punishable under Section-34(1)(a) of C.G. Excise Act.

3. The appellant abjured the guilt. The prosecution examined Excise Sub Inspector K.L.Taram PW-2 and independent witness Ishwar Prasad PW-1 and Neeraj Shrivastava PW-3. No evidence was led in defence. Relying upon the testimony of Excise Sub Inspector K.L.Taram PW-2 which was supported by Neeraj Shrivastava PW-3 in material particulars, learned trial Judge convicted and sentenced the appellant as aforesaid in para-1. Appeal preferred by the applicant herein was dismissed by the impugned judgment delivered by learned Sessions Judge, Rajnandgaon as shown in para-1.
4. Shri S.C.Verma, learned counsel for the applicant has pressed this revision only on the ground of non-compliance of Section-57 and 57-A of Act. It was contended that non-compliance of Section-57 and 57-A of the Act vitiates the prosecution. Reliance was placed on a decision of this Court rendered in Santosh and Another Vs. State of Chhattisgarh in Criminal Revision No.273/2005 decided on 29-09-2005 and Dubin Ram Vs. State of Chhattisgarh in Criminal Revision No.156/2005 decided on 30-09-2005 wherein it was held that non-compliance of provision of Section-57 and 57-A of

the Act vitiates the prosecution. On the other hand, Shri Ashish Shukla, learned Govt. Advocate argued in support of the impugned judgment.

5. The only point which thus requires consideration in this Criminal Revision is whether there is non-compliance of Section-57 and 57-A of the Act by the Excise Sub Inspector Shri K.L.Taram PW-2 after effecting the seizure of 30 bulk liters of country made liquor from the possession of the applicant herein.

6. Section-57 and 57-A of the Act read as under :-

Section-57-Report by Excise Officer- Where any Excise Officer below the rank of Collector makes any arrest, seizure or search under this Act, he shall, within twenty-four hours thereafter, make a full report of all the particulars of the arrest, seizure or search to his immediate official superior, and shall, unless bail be accepted under section 59, take or send the person arrested, or the thing seized, with all convenient dispatch, to a Judicial Magistrate for trial or adjudication.

Section-57-A- Police to take charge of articles seized- An officer in charge of a police station shall take charge of and keep in safe custody pending the orders of a magistrate or an Excise Officer, all articles seized under this Act which may be delivered to him, and shall allow any Excise Officer who may accompany such articles to the police station, or who may be deputed for the purpose by his superior officer, to affix his seal to such articles and to take samples of and from them. All samples so taken shall also be sealed with the seal of the officer in charge of the police station.

A plain reading of the aforesaid provisions clearly shows that where an Excise Officer below the rank of Collector makes any arrest, seizure or search under the Act, he shall

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within twenty-four hours thereafter, make a full report of all the particulars of the arrest, seizure or search to his immediate official superior. Section-57-A of the Act also requires that an officer in charge of a police station shall take charge of and keep in safe custody pending the orders of a magistrate or an Excise Officer, all articles seized under this Act which may be delivered to him, and shall allow any Excise Officer who may accompany such articles to the police station, or who may be deputed for the purpose by his superior officer, to affix his seal to such articles and to take samples of and from them. All samples so taken shall also be sealed with the seal of the officer in charge of the police station.

7. Section-34 of the Act entails severe punishment of imprisonment which may extend to three years and fine which shall not be less than Rs. 25,000/- but may extend to one lakh rupees upon conviction for an offence covered by clause-a of Sub-section-1, where the quantity of the intoxicant being liquor found at the time or in the course of detection of the the offence exceeds twenty five bulk liters. Section-57 and 57-A protects the accused alleged of any offence under the Act from a false or a bogus prosecution. The intention of enacting Section-57-A also appears to be that the articles seized should be proved by the prosecution to be country made liquor and to give an opportunity to the accused to prove otherwise by sending one of the samples so taken for analysis, if so desired. Section-57-A further ensures that the articles seized and the samples taken therefrom are not tampered with. Needless to say that it is ^{also} _A incumbent upon the Excise Officer

making the arrest, seizure or search under the Act to produce the intoxicant seized and the samples so prepared in the Court so as to facilitate comparison of the seals as also verification of the quantity by the Court, if so desired. Thus, the provision of Section-57 and 57-A are mandatory and enure to the benefit of the accused to establish his innocence.

8. After perusal of the record, I find that in the present case Excise Sub Inspector K.L.Taram PW-2 has not given any reason for arriving at a conclusion that the country made liquor seized from the possession of the applicant herein was 30 liters. Since severe punishment is prescribed in a case where a quantity of intoxicant exceeds 25 bulk liters it is incumbent on the prosecution to prove that the quantity seized was measured and exceeded 25 bulk liters. The Prosecution is therefore required to establish that the quantity seized from the applicant herein was measured. It is alleged that the applicant was carrying 30 bulk liters of country made liquor in a jerrican. In the World Book Dictionary, the word "jerrican" means a 5 gallon container. In the same Dictionary, a gallon is defined to be equivalent to 4.546 liters meaning thereby that a jerrican would not contain beyond 22.73 liters. Thus, the testimony of K.L.Taram PW-2 is rendered doubtful since he neither measured the quantity of the country made liquor alleged to have been seized from the possession of the applicant from a Jerrican nor produced the same in Court. Adverse inference can therefore safely be drawn against the prosecution for non production thereof.

9. Independent witness Ishwar Prasad PW-1 also did not support the prosecution story. He is a labourer at Rajnandgaon and his presence at the spot is not established. His testimony that he signed the seizure Panchnama at the behest of the Excise Sub Inspector cannot be brushed aside as false. Another witness Neeraj Shrivastava PW-3 has stated that while he was going to Khairagarh he saw a crowd near the canal and stopped out of curiosity. Excise Sub Inspector Shri K.L.Taram PW-2 informed him that liquor has been seized. He saw that liquor was kept in one Jerrican. He also saw that the applicant herein was sitting there. However, in cross examination he has stated that the seizure was not effected in his presence. It is not clear from his testimony whether he looked inside the jerrican to see what it contained. Thus, all that he saw was a jerrican on the spot. It is pertinent to note that both Ishwar Prasad PW-1 and Neeraj Shrivastava PW-3 have not stated that Excise Sub Inspector K.L.Taram performed any test on the intoxicant alleged to have been seized from the possession of the applicant herein as stated in paragraph-2 (Supra). It is thus not established by the prosecution that 30 bulk liters of country made liquor was seized from the possession of the applicant herein.
10. It is pertinent to note from the order sheet dated 01-10-2004 written by the trial Judge that the seized property was not produced before the Court. No reason has been assigned by the Excise Sub Inspector Shri K.L.Taram PW-2 for not depositing the Jerrican containing 30 liters of country made liquor with the Officer in charge of the concerned Police Station or to take any samples therefrom and to seal it. There

is nothing on record to show as to where and in whose custody the 30 bulk liters of country made liquor was kept till filing of challan on 01-10-2004. There is also nothing to show that Excise Sub Inspector Shri K.L.Taram PW-2 had, within 24 hours after making the seizure made a full report of all the particulars of arrest, seizure or search to his immediate official superior as required under Section-57 of the Act. Thus, there is total non-compliance of Section-57 and 57-A of the Act.

11. Having thus considered the evidence led by the prosecution, the following points emerge :-

- (A) There is total non-compliance of Section-57 and 57-A of the Act by Excise Sub Inspector K.L.Taram PW-2 which vitiates the prosecution.
- (B) It is not established beyond doubt that the applicant was found in possession of country made liquor in excess of 25 bulk liters.
- (C) Testimony of Shri K.L.Taram PW-2 is rendered doubtful since he did not produce the intoxicant alleged to have been seized from the applicant in the trial Court.
- (D) Independent witness Ishwar Prasad PW-1 and Neeraj Shrivastava PW-3 did not corroborate the testimony of Excise Sub Inspector K.L.Taram PW-2 relating to seizure and test performed upon the intoxicant alleged to have ^{been} seized from the possession of the applicant.

12. In the result, the revision is allowed. The conviction of the appellant under Section- 34(1)(a) of Chhattisgarh Excise Act. 1915 and the sentence awarded thereunder are set aside. The applicant is acquitted. Fine if paid, shall be refunded to the applicant.

Sd/-
Dilip Raosaheb Deshmukh
Judge

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